

AMENDED IN SENATE MAY 24, 2013

SENATE BILL

No. 761

Introduced by Senator DeSaulnier

February 22, 2013

An act to amend Section 3301 of the Unemployment Insurance Code, relating to disability insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 761, as amended, DeSaulnier. Family temporary disability insurance.

Existing law provides that there is a family temporary disability insurance program to provide up to 6 weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, or domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.

This bill would provide that it is unlawful for an employer or agent of an employer to discharge or in any other manner to discriminate against an individual because he or she has applied for, used, or indicated an intent to apply for or use, family temporary disability insurance benefits. The bill would provide that an employer ~~or an agent of an employer~~ *who regularly employs 10 or more individuals, or an agent of that employer*, that violates these provisions *by discriminating against an employee who has been employed by him or her for 90 working days or more* shall be liable to ~~an individual~~ *the employee* affected by the violation for actual damages and appropriate equitable relief, including ~~employment or reinstatement~~. The bill would also provide that if an employee ~~or applicant~~ brings a civil action seeking these remedies and

he or she prevails, the court may award the employee ~~or applicant~~ reasonable attorney's fees and costs.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3301 of the Unemployment Insurance
2 Code is amended to read:

3 3301. (a) (1) The purpose of this chapter is to establish, within
4 the state disability insurance program, a family temporary disability
5 insurance program. Family temporary disability insurance shall
6 provide up to six weeks of wage replacement benefits to workers
7 who take time off work to care for a seriously ill child, spouse,
8 parent, or domestic partner, or to bond with a minor child within
9 one year of the birth or placement of the child in connection with
10 foster care or adoption.

11 (2) Nothing in this chapter shall be construed to abridge the
12 rights and responsibilities conveyed under the CFRA or pregnancy
13 disability leave.

14 (b) An individual's "weekly benefit amount" shall be the amount
15 provided in Section 2655. An individual is eligible to receive
16 family temporary disability insurance benefits equal to one-seventh
17 of his or her weekly benefit amount for each full day during which
18 he or she is unable to work due to caring for a seriously ill or
19 injured family member or bonding with a minor child within one
20 year of the birth or placement of the child in connection with foster
21 care or adoption.

22 (c) The maximum amount payable to an individual during any
23 disability benefit period for family temporary disability insurance
24 shall be six times his or her "weekly benefit amount," but in no
25 case shall the total amount of benefits payable be more than the
26 total wages paid to the individual during his or her disability base
27 period. If the benefit is not a multiple of one dollar (\$1), it shall
28 be computed to the next higher multiple of one dollar (\$1).

29 (d) No more than six weeks of family temporary disability
30 insurance benefits shall be paid within any 12-month period.

31 (e) An individual shall file a claim for family temporary
32 disability insurance benefits not later than the 41st consecutive
33 day following the first compensable day with respect to which the

1 claim is made for benefits, which time shall be extended by the
2 department upon a showing of good cause. If a first claim is not
3 complete, the claim form shall be returned to the claimant for
4 completion and it shall be completed and returned not later than
5 the 10th consecutive day after the date it was mailed by the
6 department to the claimant, except that such time shall be extended
7 by the department upon a showing of good cause.

8 (f) ~~An employer or agent of an employer~~ *who regularly employs*
9 *10 or more individuals, or an agent of that employer,* that
10 discharges or in any other manner discriminates against an
11 ~~individual employee who has been employed by him or her for 90~~
12 ~~working days or more because he or she~~ *the employee* has applied
13 for, used, or indicated an intent to apply for or use, family
14 temporary disability insurance benefits under this section shall be
15 liable to an ~~individual employee~~ affected by the *unlawful* violation
16 for actual damages and appropriate equitable relief, including
17 ~~employment or reinstatement~~. An employee or applicant may bring
18 a civil action seeking these remedies in a court of competent
19 jurisdiction. If the employee or applicant prevails in the action,
20 the court may award the employee or applicant reasonable
21 attorney's fees and costs.